

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1846 of 1994

with

SPECIAL CIVIL APPLICATIONS No 10799 of 1994,
10801/94 AND 10800/94

Date of decision: 20-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESH PRATAP SING RAJPUT

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1846 of 1994
MR TR MISHRA for Petitioner

None present for Respondent No. 1
MR MIHIR H JOSHI for Respondent No. 2

2. Special Civil Application No 10799 of 1994
MR TR MISHRA for Petitioner
None present for Respondent No. 1
MR MIHIR H JOSHI for Respondent No. 2

3. Special Civil Application No. 10800 of 1994
Mr. T. R. Mishra for petitioner
None present for respondent No.1
Mr. Mihir H. Joshi for respondent No.2

4. Special Civil Application No.10801 of 1994
Mr. T. R. Mishra for the petitioner
None present for respondent No.1
Mr. Mihir H.Joshi for respondent No.2

CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 20/10/97

ORAL JUDGEMENT

As all these petitions proceed on the same facts and grounds of challenge, these are being taken up for hearing together and are being disposed of by this common order.

Petitioners in these special civil applications have raised industrial dispute in the matter of termination of their service. Respondent No.1, under the impugned orders, declined to refer the dispute for adjudication thereof to the Industrial Tribunal on two grounds. One ground is common in all the four matters, namely, workman was engaged as badli worker and that he has not put in 240 days' service in a year. The second ground in these four cases are as under:

The workman is not eligible for consideration for regular employment as he was not engaged on daily wages. It is reported that the application submitted to the Bank by the workman in response to the advertisement dated 20th August, 1991 is still under scrutiny.

On the aforesaid grounds respondent No.1 declined to make reference of the industrial dispute for adjudication to the Industrial Tribunal.

2. Even if it is taken that the concerned workman

has not completed 240 days' service in any of the year, still the question of retrenchment of the petitioner could have been considered on many other grounds by the Tribunal. There may be a case of victimisation, unfair labour practice or there may be some other ground, which the petitioner could have successfully challenged. It is a fact of which notice could have been taken that in such matters direct approach by the workman to this court is discouraged by this court. This court insist for availing of alternative remedy provided under the provisions of Industrial Disputes Act, 1947 where the matter pertains to the workmen. But the Central Government, on the other hand has thrown off the petitioners at the threshold of the case. While considering the matter of reference of the industrial dispute raised by the workman for adjudication to the Labour Court or Industrial Tribunal under the provisions of section 10 of the Industrial Disputes Act, 1947, the Central Government or the State Government, as the case may be, is not sitting as adjudicating authority. It has not to go in depth of the matter and decide on the legality, propriety and correctness of the action taken by the management or regarding success of the right claimed by the workman. It has to prima facie consider whether an industrial dispute existed between the management and the workman. However, if there is gross delay in approaching the authorities for reference, or where there is some exceptional circumstances, it would be a different matter. Otherwise the rule should be to order for making reference and rejection should be only an exception.

3. In all these cases, the Central Government has refused to make reference of the industrial dispute. The approach of the Central Government in the present case is wholly arbitrary and unjustified. The second ground is also equally untenable. The concerned workman may or may not have any right, but that is a question to be decided after giving both the parties sufficient opportunity to make out their case. At the stage of bringing the matter for reference of industrial dispute the Central Government is not permitting either of the parties to establish their case by producing oral and documentary evidence. The approach of the Central Government to refer only those cases where it feels that the matter will ultimately succeed is wholly unreasonable and unjust. Similarly, another ground given is that the application filed by the workman for regular employment with the respondent is still pending has hardly any substance or merit.

4. In the result all these four special civil applications succeed and the same are allowed. The impugned orders in all the four petitions are set aside. The Central Government is directed to make reference of the industrial disputes to the concerned Industrial Tribunal forthwith. Rule made absolute accordingly in all the four petitions. No order as to costs.

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